ISBA

Response to Department for Digital, Culture, Media and Sport

Online Advertising Programme consultation

June 2022

1.   About ISBA

1.1.   ISBA is the only body that represents brand owners advertising in the UK. We empower them to understand the industry and shape its future because we bring together a powerful community of marketers with common interests; lead decision-making with knowledge and insight; and give a single voice to advocacy for the improvement of the industry.

1.2.   ISBA is a member of the Advertising Association (AA) and represents advertisers on the Committee of Advertising Practice and the Broadcast Committee of Advertising Practice, sister organisations of the Advertising Standards Association, which are responsible for writing the Advertising Codes. We are also members of the World Federation of Advertisers (WFA). We are able to use our leadership role in such bodies to set and promote high industry standards as well as a robust self-regulatory regime.

1.3.   We have been leading progress in a number of vital areas for advertisers, including:

- Advancing a global first for accountable digital and cross-media measurement, in which advertisers, agencies, platforms and media owners are all taking an active stake.
- Leading the reform of the programmatic supply chain, following on from our ground-breaking study with PwC, which examined the spending of 15 major advertisers with 12 premium publishers.
- Working with the World Federation of Advertisers and the Global Alliance for Responsible Media to create a sustainable and responsible digital media environment.
- Responding to the pandemic in 2020 on multiple fronts, including working with broadcasters to create greater flexibility in trading, engaging with government over the use of keyword blocking, and developing provisions in industry production contracts to restart advertising production.
- Shaping the industry response to the Government's proposed advertising restrictions for products high in fat, sugar or salt.

Each of these is of critical importance to our members in growing their businesses and their brands. In addition, we continue to engage with regulators and legislators on every subject that touches advertisers and marketers. From tackling online harms to embedding digital literacy, from promoting evidence-led policy solutions to addressing the issue of trust in our industry, we speak to policymakers with one voice on behalf of our members.

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2. Executive Summary

2.1. We welcome the Online Advertising Programme (OAP) project and consultation, and the fact that the Government is looking to address issues of transparency and accountability within the online advertising supply chain. Given the huge growth in online advertising, the complexity of its mechanics, and the ever-evolving ways in which digital ads are created, targeted and delivered, it is right that government considers whether the regulation of this aspect of the advertising industry is fit for purpose. We also believe that it is right that government considers whether responsibility for preventing and tackling harm is being adequately taken by all actors.

2.2. ISBA has always welcomed – and has a track record of supporting – moves to reform advertising's regulatory architecture, to ensure that it evolves to meet the challenges of its time. To help inform this, we continue to carry out industry-leading thought leadership in concert with our members and fellow trade bodies. This includes our world-first assessment of the ability to track advertising spend from advertiser to publisher in our Programmatic Supply Chain Transparency Study; the subsequent effort to reach industry solutions to data accessibility and uniform standards through our Cross-Industry Taskforce; our effort to deliver meaningful cross-media measurement via Origin; and through our international work with the Global Alliance for Responsible Media (GARM) on brand safety, setting the standards needed to stop harmful user-generated content being monetised through advertising. Through these projects and others, we have demonstrated our clear commitment to raise standards within our industry to address clear public policy challenges, deliver certainty for our members, and drive trust and accountability in advertising for the public.

2.3. In that context, we therefore welcome government's commitment to an evidence-based approach to this consultation and policy development, building on the call for evidence launched in 2020. We also welcome the work that the Department for Digital, Culture, Media and Sport (DCMS) has carried out to map and define the stakeholders within the online advertising supply chain. We have made recommendations of additional actors which we believe should also be part of DCMS's considerations. A complete picture of industry participants is necessary if we are to have regulatory reform which is targeted, proportionate, and developed with a well-substantiated evidence base. In principle, we welcome the proposed widening of cross-industry responsibility for the prevention of harm in the paid-for online environment to all supply chain actors – including platforms, intermediaries, publishers and brand advertisers. This is a step that we believe will strengthen collaboration and bring greater transparency and accountability to the whole supply chain.

2.4. It is also a step which is of a piece with the other measures which are proposed to be taken by government regarding the large tech platforms, some of which have come to dominate the online space. These include designating some platforms as having 'strategic market status'; or requiring platforms hosting user-generated content to act on particular issues (and account for how they are doing so). Government is attempting to look at the online space holistically, with a number of targeted workstreams under way, including the Online Safety Bill, legislation announced in the Queen's Speech on the UK data protection regime, and the development of the Digital Markets Unit. These various workstreams must be coherent with the way in which advertising in the UK takes place and is currently

regulated. It remains possible that some of these will be in place before the next General Election, and that other measures may not have made it to the statute book. We urge the Government to try to take these various aspects of reform forward in tandem, to maximise certainty for industry and support government's goals for the digital economy, by continuing to work closely with advertisers, trade bodies, and all industry participants to constructively embed positive change.

2.5. On the specifics of the OAP, we broadly see the consultation's description of the market categories of online advertising as a good starting point – illustrative, but not exhaustive. We have made recommendations of additional market categories which we believe should also be included in consideration. We would argue that there is more work that needs to be done on both the details and specifics of harms related to online advertising before any significant reforms should be proposed. We would therefore urge government to continue to work collaboratively with industry in whatever steps follow the conclusion of the consultation.

2.6. We welcome the taxonomy described in the consultation as a useful starting point for understanding the harms which may be associated with online advertising. However, we do see that there is a need for more detail and clarification in a number of areas. For example, the taxonomy does not take into consideration additional layers of guidance, regulation, or enforcement which are already in place across different sectors. We would encourage government to consider a second iteration of the taxonomy which would include a spectrum of harms – for example, distinguishing between high, medium and low risk harms. More detail is also needed as to the prevalence of each harm, their causes, and where they occur in the supply chain.

2.7. Our assessment is that the OAP is seeking to address harms which stem from three substantially different sources and types of actors.

- Category A: Harms arising from paid-for online advertising by legitimate companies and organisations, that may have the potential to mislead, harm or offend their audience.
- Category B: Harms arising from paid-for online advertising by criminally motivated actors. This may include illegal behaviour such as human trafficking, child sexual exploitation, the sale of illegal goods, or advertising fraud.
- Category C: Industry harms to advertisers and the industry which are not illegal, but which are matters for contract – for example, brand safety concerns driven by the placement of ads next to inappropriate or harmful content, as well as the potential for ads to fund sites that cause harm (such as those hosting misinformation or disinformation).

2.8. The starting point for any analysis should be that there are very high levels of compliance with the Advertising Codes overseen by CAP and BCAP when it comes to paid-for advertising by the legitimate actors outlined in Category A. The Advertising Standards Authority (ASA) escalates complaints to a backstop regulator (in the case of broadcast) or law enforcement in only a small minority of cases. There is no evidence that this system is failing or that it is causing the harms outlined in the consultation paper. Rather, the ASA continues to evolve its approach and pilot new methods of further driving up compliance – for instance, its Intermediary and Platform Principles (IPP) pilot, which formalises how platforms and

intermediaries promote the CAP Code and support the ASA's regulation of online ads.

2.9. In terms of Category B and criminally-motivated harms, it is self-evidently the case that the perpetrators of these harms would not wish to be regulated – and that illegalities sit outside of the ASA's remit and jurisdiction. Quite properly, they are a matter for law enforcement. The ASA is not and should not be responsible for addressing illegal behaviour, and preventing and seeking redress for these behaviours must begin with the police and relevant enforcement agencies.

2.10. Our major reflection on this consultation is our extreme concern at the possibility that Ministers might rip up the system of self- and co-regulation of advertising content and placement that has proven to be a world-leading success story. The UK has a proportionate, adaptable and robust approach that works for consumers and advertisers. We do not see that there is any rationale, or that any case has been made, for a disruptive and potentially damaging regulatory intervention which would undermine the very task of minimising harm that government has rightly identified.

2.11. Logically, we therefore oppose the option of a new statutory regulator with Code-writing and enforcement powers. We and our members strongly believe that the ASA's role and work must be maintained and developed as the most effective option for regulation of the advertising industry. Furthermore, we would strongly recommend that the Government allow the IPP pilot to conclude and be evaluated, and that this is taken into account before Ministers publish any response to the OAP consultation or develop any next steps with regard to regulation or legislation. The IPP goes to the core of many of the legitimate questions and issues raised by the OAP.

2.12. Our stated preference is therefore for 'Option 1' and the maintenance of the ASA system, with suitable evolution after lessons that may be learned from the IPP pilot, and the requirements that may result for intermediaries, publishers, and platforms. This option should also recognise how adoption of other industry codes and standards strengthens the wider ecosystem.

2.13. It is possible that a case can be made for a backstop regulator – 'Option 2' of the consultation – where it can be demonstrated that part of the ecosystem currently lacks one, and where a need is shown to exist. This is less, as the OAP puts it, the ASA being "backstopped more fully" than it is the possible extension of backstop powers to other qualified parts of the regulatory system which may already exist – such as Ofcom. It is our view that this should be considered before there is any suggestion of a new regulatory body.

2.14. As ever, we welcome the continuing opportunity to discuss the shape of future regulation, the minimisation of harms, and the reform of online advertising and its regulation with Ministers and DCMS officials. We hope to continue to do so following the conclusion of this consultation.

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3. Scope of the OAP and Context for Reform

3.1. This section of our response addresses the questions set out in Chapter 2 of the OAP consultation document, on the online advertising market.

The nature of online advertising and list of actors

3.2. We consider that the work which has been done by DCMS to set out the nature of the online advertising market, and to describe the technological developments which have taken place, is useful and comprehensive, if not quite complete. We agree with the categories of online advertising and markets that have been included, but find that there is a need for additional categories, as well as some areas in need of clarification.

3.3. In addition to the categories of online advertising listed, we believe that additional categories need be included to cover the following.

3.4. *Affiliate marketing.* This provides publishers with alternative revenue to the direct placement of ads. Rather than paying for an advertising unit, advertisers work, usually through an affiliate network intermediary, to place codes on ads for their products and services, on in-text links or embedded in display ad units. Publishers are paid if a consumer clicks on the link and subsequently purchases the product or service. Affiliate marketing revenues are now a significant revenue stream for news and periodical publishers in particular, which have significantly diversified their revenue operations due to falling print sales and lower yielding digital ads.

3.5. Most leading retailers and online businesses run affiliate programmes. Loyalty, voucher code and cashback websites, and price comparison websites for financial services and utilities, all deploy affiliate codes. It is also a leading revenue source for social media influencers, and plays a significant role supporting start-up publishers, bloggers/vloggers, and brands seeking low-barrier entry routes to market. The IAB measured 2021 affiliate ad spend (excluding eBay and Amazon) at £793m in UK. In previous IAB studies, the ratio of sales return for advertisers via the affiliate model was estimated at 15:1 (for every £1 spent, £15 was generated in sales). If replicated for 2021, this would equate to an estimated value of £11.9bn for sales generated through the affiliate marketing model in the UK.

3.6. *Lead generation.* This is similar in form to affiliate marketing, and is often run by affiliate networks and specialist lead generation agencies. Through lead generation, media owners are rewarded for acquisition of verified leads – for example, for financial services products or product sales – using the online advertising techniques noted above for affiliate marketing.

3.7. *Native advertising.* A subset of display advertising, this category provides for formats that 'blend' with the surrounding content – for example, in-feed display ads in Facebook feeds – in a natural way. They are sometimes labelled, as per ASA guidelines, to ensure consumers understand they are looking at an ad. These formats can be unique to a publication or service, or be delivered programmatically via a specialist adtech company. Some 'branded content' is sometimes referred to as 'native advertising' and is highly customisable labelled content created to fit into a publication's overall style – a kind of advertorial. According to the IAB's Ad Spend for 2021, native ad formats netted £2bn for publishers.

3.8. *Gaming environments.* Gaming is a rich environment for audiences. Access to games, from simple puzzles to complex interactive experiences, is often ad-supported via the open market to provide free-at-the-point of delivery gaming across desktop and mobile environments. Specialised high-end gaming environments support sophisticated ad formats – for example, live programmatically-delivered ads to display boards within the graphics of a sports game are becoming increasingly common.

3.9. *Retail media.* This is a growing channel of audience reach for advertisers, because of the quantity of first-party data held by retailers and, therefore, the ability to provide access to fully consenting audiences. It is an interesting advertising environment, largely owned by large advertisers themselves, who can provide related inventory for advertisers seeking engaged audiences. In some respects, the ability for product manufacturers to buy advertising inventory within a shopping environment, such as an online supermarket, is an extension of shopper and partner marketing techniques. ISBA expects to see ongoing developments representing innovative commercial relationships and partnerships in the future.

3.10. As well as adding these categories of online advertising, we believe that the Government should consider whether to broaden the market category of 'search'. Paid-for search results are not just shown in search engines, and this category could also apply to online retailers, publisher websites, and app stores that use search listing solutions of their own. These formats could similarly be considered part of the 'search' categorisation.

3.11. When considering the list of market actors which the consultation sets out, we would question why agencies have been included within the category of 'advertisers'. As the trade body that represents brand advertisers in the UK, we do not think that this is an accurate representation, and that agencies should be considered separately. They play a distinct role, particularly in the commoditisation of digital advertising inventory through scaled deals – such as global agreements with major platforms and the establishment of Private Market Places. Here, to a degree, agency trading desks control media buying for clients (i.e. the brand advertiser), influencing pricing and placement. This is only one example, but it illustrates the distinctions and, more broadly, the differences between the role that brands/advertisers play within the market and their interest and concerns, in contrast to those of agencies.

3.12. We would further recommend to government that ad verification companies should be included within the list of market actors. Verification companies play a vital role in brand safety and suitability, and in countering fraud. These companies crawl websites to understand their contents, providing brands and agencies with the means to avoid content through the use of keywords and categories. This is a vital process in helping to improve brand safety and avoid industry harms, while ensuring that advertising is not used to monetise harmful or illegal content online.

3.13. We would also recommend to government that ad exchanges are included within the scope of market actors. Without ad exchanges, ad impressions would not reach publishers.

3.14. These lists of industry actors and market categories should not be viewed either as permanent or exhaustive. New formats and forms of digital advertising are continually emerging. While 'online' may, at present, most commonly refer to

something that is displayed on a computer or mobile screen, it may in the future also include wearable technologies, smart assistant devices, or holographic executions, where advertising may be served through a similar supply and trading infrastructure as currently exists in the market. This, in a nutshell, is one of the challenges posed by the OAP: the need to make regulation of online advertising fit for purpose, fit for the future, and futureproof.

The online advertising market

3.15. We broadly welcome the birds-eye view that government has taken of the online advertising supply chain and ecosystem. The analysis given in the consultation document captures the main market dynamics and the main points of the supply chain. While we welcome this holistic approach and see this as a good starting point, we do see some gaps, and areas where more detail is needed.

3.16. To assist with this, we would once again draw the Government's attention to the work led by ISBA which seeks to analyse, understand, and address transparency issues within the open web display sector in the online advertising supply chain. This work – carried out in concert with ISBA members, fellow trade bodies, and other industry participants – is a clear example of the advertising and marketing industry demonstrating thought leadership and initiative to address a systemic issue in the operation of online advertising, and working collaboratively to produce solutions. This has been done without the need for a statutory regulator or government-led intervention.

3.17. This workstream began with the publication in May 2020 of the Programmatic Supply Chain Transparency Study, carried out by ISBA in association with the Association of Online Publishers (AOP) and PwC. ISBA members funded the exercise, which audited ad impressions from 15 advertisers across 12 publishers. The study found a lack of data standardisation and the absence of the means for appointed auditors to access the data for audit purposes. This resulted in only 12% of the ad impressions being able to be identified, with some 15% of total ad spend and 30% of supply chain costs being unidentifiable – an 'unknown delta'. The study's two main recommendations were therefore:

1) that standardisation was urgently required across a range of contractual and technology areas, to facilitate data sharing and drive transparency; and
2) that all industry participants should collaborate to further investigate the unattributable costs, and agree industry-wide actions to reduce them.

3.18. In the wake of the study, ISBA convened a Cross-industry Programmatic Taskforce made up of the AOP (representing publishers), IAB UK (representing ad tech vendors), the Institute of Practitioners in Advertising (IPA, representing advertising agencies) and ISBA itself (representing brand advertisers). The mission of the group is to transform the programmatic supply chain to allow ad campaigns to be evaluated and audited from end-to-end. This is being addressed through the following objectives:

- to enable all supply chain participants access to data;
- to evaluate different techniques that would help achieve this;
- to agree a common set of data fields;
- to agree log file retention standards; and
- to drive cross-industry commitment to adopt common standards.

3.19. To enable advertisers and publishers to act on their existing rights to financial audits of their programmatic supply chains – with the aim of reducing the size of the 'unknown delta' – the initial work of the Taskforce focused on access to data and the standardisation of data consistency. Through extensive industry collaboration, the Taskforce has produced a toolkit of three instruments available for adoption by the industry, which were launched in February 2022. These include an Audit Permission Letter (APL) intended to enable Demand Side Platforms (DSPs) and Supply Side Platforms (SSPs) to share the data needed for a full financial audit; a Data Fields List (DFL), i.e. an agreed list of essential and supporting data fields which will provide the data to enable auditors to match impressions along the supply chain between advertisers and publishers; and a Principles document which summarises how these products are intended to be used, by whom, and why.

3.20. We regard this set of instruments as an initial solution, and expect the industry to continue to work together to ensure that all advertisers and publishers are able to audit their supply chains in an affordable and timely manner. This will require the Taskforce to widen the remit of access to programmatic supply chain transaction data to intermediaries, who can process on behalf of audit forms which do not possess considerable high-end capacity. We would welcome an opportunity to discuss this further and in detail with Ministers and DCMS officials, because we believe this ongoing work addresses many of the legitimate issues raised in Section 2 of the OAP consultation document.

The future of the market

3.21. While the OAP overview of the online advertising market is a good starting point, we would advise DCMS not to view this as final or permanent, due to the rapidly evolving nature of the online environment. Rather, this landscape is one which should be regularly under review (as indeed it is by the ASA). The Metaverse is an excellent example of a wholly new digital environment which is likely to evolve multiple forms of currently unknown advertising opportunities, and which would necessarily use ad-serving infrastructure. Inevitably, any analysis of the online advertising market would similarly need to adapt and evolve over time.

3.22. We would argue that this dynamism is one of the strengths of the world-leading ASA self- and co-regulatory system: an in-built flexibility which allows it to be agile and react to meet the challenges of a rapidly evolving, innovative market.

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4. Harms Caused by Online Advertising

4.1. This section of our response addresses the questions set out in Chapter 3 of the OAP consultation document.

4.2. We welcome the Government's ambition to tackle online harms, including those that might be associated with the content and/or placement of paid-for online advertising. Preventing or minimising consumer and industry harm, and widening that task and accountability for it to all actors, is a task which is of high importance to ISBA members. It engages a fundamental tenet of our industry: the need for trust and confidence in what we do, what we produce, and the environments in which content is seen.

4.3. ISBA has been at the forefront of the challenge of driving up trust in the advertising and marketing sector. As a leading stakeholder in the AA, we have helped to lead joint work to understand the drivers of public trust in advertising, and to improve industry standards and practices to help address historically low levels of that trust. This has taken the form of several actions, including seeking to reduce advertising bombardment; reducing excessive frequency and re-targeting; ensuring that the ASA is a 'best in class' regulator (particularly supporting its *More Impact Online* five-year strategy); ensuring that data privacy matters (as, for instance, ISBA members do through our Data & Ethics Working Group); and showing that advertising can drive social change (as through our industry initiatives focused on climate change and sustainability, including Ad Net Zero).

4.4. Credos' 2021 report, *Rebuilding Trust in UK Advertising*, highlights that the public responds best to high-quality advertising that entertains and engages, and that quality is the most important positive driver of public trust. The report also highlighted increased concerns about the boundaries of advertising in our lives, with bombardment still seen as the most important factor in public distrust. The significance of misleading and invasive advertising techniques – including a growing experience of scams or fraudulent communications – as a driver of distrust increased more than any other drive between 2018 and 2021, mostly driven by younger consumers. Given some of the focus of the OAP, it is clear that addressing the safety of the online environment is a key part of improving trust and accountability for our industry.

The taxonomy of harms

4.5. We welcome the OAP's taxonomy of harms as a useful starting point in seeking to understand the harms that might be associated with the content and/or placement of online advertising. However, we do see that there is a need for more detail and clarification in a number of areas.

4.6. Our assessment is that the OAP is seeking to address harms associated with online advertising which stem from three substantially different sources and types of actors, which might be described as follows.

- *Category A:* Harms arising from paid-for online advertising from legitimate companies and organisations that may raise the potential to mislead, harm or offend their audience. Almost all ads in this category are regulated by the ASA system, with the consent of the industry and statutory enforcement

bodies, and through processes formally recognised by the courts and the Government.

- *Category B:* Harms arising from paid-for online advertising from criminally motivated actors. This might include illegal behaviour such as human trafficking, child sexual exploitation, the sale of illegal goods, or advertising fraud (including issues like bogus investment schemes and identity theft). This category is subject to the law and potential prosecution by a wide range of domestic and international criminal law enforcement bodies – for example, the National Crime Agency, National Cyber Security Centre, police, FCA, ICO, and other international law enforcement bodies.
- *Category C:* Harms to advertisers and the industry, including brand safety concerns driven by the placement of ads next to inappropriate or harmful content, as well as the potential for ads to fund sites that cause harm, such as those hosting misinformation or disinformation. Issues of brand safety are, generally, either a matter of contracts between relevant parties – for example, an advertiser and an agency, publisher or ad tech intermediary – or are being more broadly addressed through industry-wide initiative unrelated to the ASA system of regulation.

4.7. The starting point for any analysis should be that there are very high levels of compliance with the CAP and BCAP Codes for paid-for advertising by the legitimate actors outlined in Category A. The ASA escalates up to backstop regulators in only a small minority of cases. There is no evidence that this system is failing, or is causing any of the harms outlined in the consultation paper.

4.8. We believe that there is a need for greater distinction within the taxonomy between those harms that stem from deliberately bad actors who intend to circumvent good practice, regulators, and safety measures (Category B), and those good actors who might inadvertently cause harm, but who nevertheless follow good practice and processes while contributing to the overall improvement of advertising standards (Category A).

4.9. We would encourage government to consider a next iteration of the taxonomy which might include a spectrum of harms – distinguishing between harms of high, medium and low risk, for example. This is not to say that low-risk harms would not require action or remedy; but a second version might better distinguish between different types of harms and, therefore, the most effective course of action that can be taken to mitigate or eliminate them.

4.10. An example of this approach is the work undertaken by the Global Alliance for Responsible Media (GARM), which was convened by the World Federation of Advertisers (WFA) and of which ISBA is a member of the Steering Committee. GARM has produced a Brand Safety Floor and a Suitability Framework, which offers common definitions to which participants have agreed to adhere.

4.11. The Brand Safety Floor (Fig. 1) lists content which the industry considers is not appropriate for any advertising support. The Suitability Framework (Fig. 2) lists sensitive content which may be appropriate for advertising, when that advertising is supported by proper controls. As a member of the Steering Committee, we see this work as essential to creating a safer digital media environment that enriches society through content, communications, and commerce.

CONTENT CATEGORY	BRAND SAFETY FLOOR – Content not appropriate for any advertising support
Adult & Explicit Sexual Content	• Illegal sale, distribution, and consumption of child pornography • Explicit or gratuitous depiction of sexual acts, and/or display of genitals, real or animated
Arms & Ammunition	• Promotion and advocacy of Sales of illegal arms, rifles, and handguns • Instructive content on how to obtain, make, distribute, or use illegal arms • Glamorization of illegal arms for the purpose of harm to others • Use of illegal arms in unregulated environments
Crime & Harmful acts to individuals and Society, Human Right Violations	• Graphic promotion, advocacy, and depiction of willful harm and actual unlawful criminal activity – Explicit violations/demeaning offenses of Human Rights (e.g. human trafficking, slavery, self-harm, animal cruelty etc.), • Harassment or bullying of individuals and groups
Death, Injury or Military Conflict	• Promotion, incitement or advocacy of violence, death or injury • Murder or Willful bodily harm to others • Graphic depictions of willful harm to others • Incendiary content provoking, enticing, or evoking military aggression • Live action footage/photos of military actions & genocide or other war crimes
Online piracy	• Pirating, Copyright infringement, & Counterfeiting
Hate speech & acts of aggression	• Behavior or content that incites hatred, promotes violence, vilifies, or dehumanizes groups or individuals based on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status, or serious disease sufferers.
Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust	• Excessive use of profane language or gestures and other repulsive actions that shock, offend, or insult.
Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol	• Promotion or sale of illegal drug use – including abuse of prescription drugs. Federal jurisdiction applies, but allowable where legal local jurisdiction can be effectively managed • Promotion and advocacy of Tobacco and e-cigarette (Vaping) & Alcohol use to minors
Spam or Harmful Content	• Malware/Phishing
Terrorism	• Promotion and advocacy of graphic terrorist activity involving defamation, physical and/or emotional harm of individuals, communities, and society
Debated Sensitive Social Issue	• Insensitive, irresponsible and harmful treatment of debated social issues and related acts that demean a particular group or incite greater conflict;

Fig. 1. GARM Brand Safety Floor

4.12. In addition to these points regarding the content and structure of the taxonomy, we would also note that the taxonomy does not include or take into consideration additional layers of guidance, regulation, or enforcement for the advertising of products and services across different sectors, including those which the taxonomy notes are age-restricted, or 'legal but harmful'.

4.13. For example, as of 1 July 2017, the CAP/BCAP Codes on the advertising of food and drink products high in fat, sugar, or salt (HFSS) have been subject to dedicated restrictions on their placement and content online. These rule changes were in response to wider concerns about childhood diet and obesity, and recognised changes in the media environment – bringing non-broadcast media, including online spaces, into line with the rules for broadcast advertising. These rules will undergo further change to accommodate the advertising restrictions legislated for in the Health and Care Act 2022.

4.14. A further example of sector-specific rules lies with the alcohol industry's Portman Group, which has 12 rules which apply to alcohol marketing, representing minimum standards. Many producers and brands go further than this code and have their own internal guidelines. In addition to the code rules, the Portman Group provide guidance on their application, monitor market trends and advise on how to responsibly present products, marketing, and promotions.

CONTENT CATEGORY	High Risk	Medium Risk	Low Risk
Adult & Explicit Sexual Content	• Suggestive sexual situations requiring adult supervision/approval or warnings • Full or liberal Nudity	• Dramatic depiction of sexual acts or Sexuality issues presented in the context of entertainment • Artistic Nudity	• Educational, Informative, Scientific treatment of sexual subjects or sexual relationships or sexuality
Arms & Ammunition	• Glamorization /Gratuitous depiction of illegal sale or possession of Arms • Depictions of sale/use/distribution of illegal arms for inappropriate uses/harmful acts	• Dramatic depiction of weapons use presented in the context of entertainment • Breaking News or Op-Ed coverage of arms and ammunition	• Educational, Informative, Scientific treatment of Arms use, possession or illegal sale • News feature stories on the subject
Crime & Harmful acts to individuals and Society, Human Right Violations	• Depictions of criminal/harmful acts or violation of human rights	• Dramatic depiction of criminal activity or human rights violations presented in the context of entertainment • Breaking News or Op-Ed coverage of criminal activity or human rights violations	• Educational, Informative, Scientific treatment of crime or criminal acts or human rights violations • News feature stories on the subject
Death, Injury or Military Conflict	• Depiction of death or Injury • Insensitive and irresponsible treatment of military conflict, genocide, war crimes, or harm resulting in Death or Injury • Depictions of military actions that glamorize harmful acts to others or society	• Dramatic depiction of death, injury, or military conflict presented in the context of entertainment • Breaking News or Op-Ed coverage of death, injury or military conflict	• Educational, Informative, Scientific treatment of death or injury, or military conflict • News feature stories on the subject
Online piracy	• Glamorization /Gratuitous depiction of Online Piracy	• Dramatic depiction of Online Piracy presented in the context of entertainment • Breaking News or Op-Ed coverage of Online Piracy	• Educational, Informative, Scientific treatment of Online Piracy • News feature stories on the subject
Hate speech & acts of aggression	• Depiction or portrayal of hateful, denigrating, or inciting content focused on race, ethnicity, gender, sexual orientation, gender identity, age, ability, nationality, religion, caste, victims and survivors of violent acts and their kin, immigration status or serious disease sufferers, in a non-educational, informational, or scientific context	• Dramatic depiction of hate speech/acts presented in the context of entertainment • Breaking News or Op-Ed coverage of hate speech/acts	• Educational, Informative, Scientific treatment of Hate Speech • News features on the subject
Obscenity and Profanity, including language, gestures, and explicitly gory, graphic or repulsive content intended to shock and disgust	• Glamorization /Gratuitous depiction of profanity and obscenity	• Dramatic depiction of profanity and obscenities presented in the context of entertainment by genre • Breaking News or Op-Ed coverage of profanity and obscenities Genre based use of profanity, gestures, and other actions that may be strong, but might be expected as generally accepted language and behavior	• Educational or Informative, treatment of Obscenity or Profanity • News feature stories on the subject
Illegal Drugs/Tobacco/e-cigarettes/Vaping/Alcohol	• Glamorization /Gratuitous depictions of illegal drugs/abuse of prescription drugs • Insensitive and irresponsible content/treatment that encourages minors to use tobacco and vaping products & Alcohol	• Dramatic depiction of illegal drug use/prescription abuse, tobacco, vaping or alcohol use presented in the context of entertainment • Breaking News or Op-Ed coverage of illegal drug use/prescription abuse, tobacco, vaping or alcohol use	• Educational, Informative, Scientific treatment of illegal drug use/prescription abuse, tobacco, vaping or alcohol • News feature stories on the subject
Spam or Harmful Content	• Glamorization /Gratuitous depiction of Online Piracy	• Dramatic depiction of Spam or Malware presented in the context of entertainment • Breaking News or Op-Ed coverage of Spam or Malware	• Educational, Informative, Scientific treatment of Spam or Malware • News feature stories on the subject

CONTENT CATEGORY	High Risk	Medium Risk	Low Risk
Terrorism	• Depiction of terrorist actions that are disturbing, agitating or promotes harmful acts to others or society • Terrorist content requiring a viewer advisory • Insensitive and irresponsible treatment of terrorism/ related crimes	• Dramatic depiction of terrorism presented in the context of entertainment • Breaking News or Op-Ed coverage of acts of terrorism	• Educational, Informative, Scientific treatment of terrorism • News feature stories on the subject
Debated Sensitive Social Issue	• Depiction or discussion of debated social issues and related acts in negative or partisan context	• Dramatic depiction of debated social issues presented in the context of entertainment • Breaking News or Op-Ed coverage of partisan advocacy of a position on debated sensitive social issues	• Educational, Informative, Scientific treatment of debated sensitive social issues and related acts including misinformation • News feature stories on the subject

Fig. 2 GARM Brand Sustainability Framework

4.15. Furthermore, for the advertising of financial products and services, the Financial Conduct Authority (FCA) provides an additional layer of guidance, regulation, and scrutiny. The FCA states that all financial promotions must be clear, fair, and not misleading – regardless of the media type. In addition, financial promotions may need to comply with specific FCA rules, depending on the product type they are promoting. When the FCA finds a financial promotion that is misleading it can:

- ask the firm to change or remove the advert;
- ask the firm to write to customers who may have been misled;
- warn or fine the firm; or
- ban the promotion.

4.16. ISBA members have asserted to us that the concept and terminology of 'legal but harmful' within the taxonomy needs to be clearly defined and explained. We agree and believe that the practical implications for advertisers and these product types, sectors and categories have not been set out. Without exploring this in more detail, it is not possible to conclude whether the taxonomy is effectively representing the harms faced by consumers, industry and wider society.

4.17. We further note that the taxonomy includes adverts which contain legal but potentially offensive content. There could be difficulty and sensitivity in creating any statutory body or legislation which rules on offence. The Codes already include principles and rules around 'harm and offence', for both broadcast and non-broadcast advertising. The ASA, as the self-regulatory body, is well placed to rule on such matters on a case-by-case basis. It not clear whether it would be desirable or practical to legislate against offence, as described in the taxonomy, because of freedom of speech concerns, context, and the subjectivity of offence or distaste compared to a clear breach of codes and regulations.

4.18. We note that adverts for gambling services are categorised as a consumer harm, deemed harmful but not illegal. We would highlight to government that the OAP consultation takes place following several regulatory developments for gambling advertising in recent times – both prompted by the pandemic and separate to it. These have included regulatory changes such as the limits on maximum stakes on Fixed Odds Betting Terminals, and the Gambling Commission's tightening of the rules on the age and identity checks which operators must carry out before an individual can gamble online. Gambling on credit cards has also been banned. The gambling sector has also introduced proactive changes, including the Betting and Gaming Council's 10-point plan, which contains commitments that safer gambling messages would form at least 20% of all TV and radio advertisements; action to ensure responsible advertising, including monitoring volume; reporting all rogue advertising from black market operators; and signposting help to Gamcare, the National Gambling Helpline, and Gamstop for self-exclusion.

4.19. As these measures were being instituted, CAP also ran a public consultation on changes to the Gambling and Lotteries sections of the CAP Codes, in response to the GambleAware Final Synthesis Report. The outcome included the replacement of the ban on ads with a 'particular' appeal to under-18s with a strengthened wording, banning ads with 'strong' appeal to that age group. Collectively, these are developments in gambling advertising which government should take account of in terms of their demonstrating that industry self- and co-regulation continues to move

forward, quickly respond to new research, and evolving in response to new challenges.

4.20. We note the inclusion and recognition of the harm caused by fraudulent advertising in the taxonomy, and the inclusion of measures to tackle it in the Online Safety Bill. Fraudulent and scam advertising has become an increasing concern for legitimate brand advertisers who adhere to good and best practice and, in the light of the Credos findings mentioned above, tackling this is clearly in the public and industry interest. We would highlight that fraud and scams are the work of bad actors, who deliberately evade best practice, guidance and regulation, and that tackling this illegality must ultimately be the purview of law enforcement.

4.21. This is an important task given the purported scale of fraud. A recent report by the US-based Association of National Advertisers (ANA) projected that the cost to American advertisers of ad fraud will reach $120bn this year – double the cost in 2018. Industry initiatives are underway to help tackle this growing issue, not least those led by the Trustworthy Accountability Group (TAG – which merged with the Joint Industry Committee for Web Standards, JICWEBS, in 2020 in order to consolidate and gain greater reach for anti-fraud efforts); but the estimates of the scale of the problem vary widely, and enforcement is clearly inadequate.

4.22. In a related vein, we do remain concerned that the measures in the OAP and the Online Safety Bill combined will only bring into scope fraudulent advertising within user-generated content and search. As currently drafted, these measures do not take into account open-display advertising, which is the source of a significant portion of fraudulent and scam advertising online.

4.23. We welcome the inclusion of misleading advertising as consumer harm in the taxonomy. This is also being considered by GARM for inclusion in the Brand Safety Floor and Suitability Framework described above. We would also highlight further work already being carried out to tackle misinformation.

- *Global Disinformation Index (GDI).* The GDI's work focuses on three primary areas. First is a neutral, independent, transparent index of a website's risk of disinforming readers, using cutting-edge artificial intelligence and thorough analyses to best serve and inform advertisers, the ad tech industry, search and social media companies, and researchers. Second, an independent, non-profit, open-source intelligence (OSINT) hub, which tracks disinformation and extremism across platforms online. Third is a policy team that provides data and research to support policy makers in governments, regulatory bodies and platforms around the world.
- *Conscious Advertising Network (CAN).* CAN is a voluntary coalition of over 70 organisations whose mission is to stop advertising abuse and work on industry ethics relating to the technology used in modern advertising. The six manifestos developed by CAN include manifestos on 'Anti ad-fraud' and 'Mis/disinformation'.
- *NewsGuard.* NewsGuard is a tool that shows the trust ratings for more than 7,500 news and information websites across the internet. For marketers, NewsGuard offers BrandGuard, a service to help advertisers identify credible news sources for their ad placements while avoiding sites that do not adhere to their standards. NewsGuard was created by a team of journalists who assess the credibility and transparency of news and

information websites based on nine journalistic criteria, such as whether the site repeatedly publishes false content, whether it discloses who owns and finances it, and whether it corrects factual errors when they occur.

Influencer marketing

4.24. We note that paid-for influencer marketing that is not clearly identified as such, is categorised as a potential consumer harm and illegal content due to non-identifiable advertising. Failure to disclose when an ad is an ad was among the reasons for ISBA's development and launch, in September 2021, of an Influencer Marketing Code of Conduct. This Code is aimed at raising standards of best practice, smoothing relationships between industry participants, and delivering transparency for consumers; and was driven by ISBA members who wanted to address the challenges posed by influencer marketing. It was designed in collaboration with representatives from talent agencies and a group of influencers, with the aim that it would become an industry standard.

4.25. The Code is not a set of rules and regulations, but is a guide to best practice that contains commitments from brands, agencies, and talent. It aims to:

- Deliver the transparency consumers expect and deserve – by being clear on the need to disclose when an ad is an ad (and how); by committing not to use photo filters and misleading editing techniques; and by meeting obligations to protect children and vulnerable groups.
- Enable authentic and effective influencer marketing – by backing influencers to deliver their honest opinion on products; supporting their wellbeing, from mental to financial health; and always promoting diversity and inclusion, with zero tolerance for hateful content.
- Improve brand/agency/talent relationships – by setting out how all participants will work collaboratively on campaigns; agencies committing to play a key role in aligning brands and talent; and with clarity from brands on KPIs and from influencers on helping demonstrate ROI.

While not a binding legal document, the Code could be appended to legal contracts. At its launch, brands from across ISBA's membership, talent agencies, and influencers agreed to adhere to the Code, in the hope that others across industry would follow suit.

4.26. In May 2022, we launched an updated version of the Code of Conduct, with a focus on helping brands to deliver better diversity, equity, inclusion (DEI), and representation in their influencer activity. Dedicated discussions were held on how brands could ensure that they were delivering change in DEI. After input from agencies and influencers themselves, signatory brands committed to:

- be allies in addressing the unacceptable pay gaps in influencer marketing, including those based on race and gender;
- regularly audit the diversity of the pool of talent with which they work; and
- work to address diversity in their own marketing teams, to promote truly inclusive campaigns.

The Working Group is moving on to consider what practical guidance on implementation they can share with industry, driving change and measuring progress so that the dial is truly moved on diversity and representation.

4.27. Influencer marketing is a powerful tool. In a world where advertising has suffered from a loss in trust, and where consumers are more likely to believe in the recommendations of a peer or 'someone like me', influencer campaigns offer the chance for individuals, agencies, and brands to work together, using new platforms to reach audiences in engaging ways. At its best, influencer marketing allows for authentic, personalised ads, delivered in a transparent way. However, if done incorrectly, we accept that it can cause reputational damage to influencers and brands alike. There is no excuse for failing to disclose when an ad is an ad, or for misleading consumers with photo editing. Equally, influencers often face real challenges when it comes to financial flows and mental health. Meanwhile, brands know influencer marketing can be effective, but struggle to demonstrate ROI.

4.28. In relation to transparency for consumers, the Code includes commitments from advertisers and brands to be clear about disclosure requirements, including when and where we expect to see the #ad label that is considered by the ASA and CMA to be the gold standard. Meanwhile, influencers commit to follow the regulatory guidance on making clear when ads are ads, always using the easily comprehensible #ad and avoiding unclear alternatives such as #spon. Furthermore, influencers also commit to follow the regulatory guidance on the location of the disclosure in different formats, ensuring that #ad is immediately visible before a consumer engages in the content (for example, at the beginning of a post without the consumer having to click 'see more'), so that the consumer appreciates from the outset that they are being advertised to.

4.29. The Code of Conduct is an exercise in industry leadership, proactively seeking to stand with consumers who deserve transparency and accountability about when they are being advertised to, and to promote higher standards by marketing participants across the board. We believe that this has been a useful piece of industry thought leadership which is helping to proactively tackle a potential consumer and industry harm.

Ad targeting and placement

4.30. Several of the consumer harms listed in the taxonomy are related to advertising targeting and placement. Most online advertising uses some degree of precision targeting. So-called 'mass reach' targeting – the online equivalent of putting up a roadside billboard – is not considered good online marketing practice.

4.31. Precision targeting in online advertising allows advertisers to reach the right target market of consumers and reduce the likelihood of reaching the incorrect target market. Likewise, precision targeting can also be used to exclude internet users who should not see certain categories of advertising; for example, stopping children from seeing age-restricted products and advertising. Precision targeting capabilities that would be required to prevent children from being shown ads for HFSS, alcohol or gambling products and services, for example, are already the norm.

4.32. We remain firmly of the view, as we said in response to the recent consultations on the HFSS advertising restrictions, that targeting is an effective method of ensuring that ads land with the audiences that they should reach, while avoiding those that

they should not; and further, that targeting is a consistently evolving and evaluated practice that is becoming ever-more refined. CAP is committed to continuing to strengthen its requirements around the targeting of age-restricted ads online. Since 2018, it has consistently published monitoring reports which focused on the media placement and audience targeting of online ads for alcohol, gambling and other age-restricted ads; and it has now launched a comprehensive review of its Age-restricted Ads Online guidance. This aims to improve its usability and impact in appropriately limited under-18's exposure to these types of restricted ads online.

4.33. We emphasise that advertisers are determined to comply with existing regulations, not least because they are fully aware that they will be held ultimately liable for any non-compliance by the regulator. They are, therefore, clear in highlighting that any age-restricted ad campaign must be targeted away from children when dealing with their agencies or trade desks, or when working directly with publishers or platforms. Regular advertisers of age-restricted products will often approach agencies with their own recommendations for how to best reach their target audience and how to avoid their ads being served to children.

Industry harms

4.34. We do agree with the range of industry harms that are outlined in the taxonomy. However, we would encourage government to view the 'industry harms' categorised within the OAP – including inaccurate audience measurement (see section on Origin below) and brand safety, including mis-targeting – as harms that the industry is already working to address and which do not need to fall within the remit of a regulator. We hope that in its response to this consultation, the Government will note the work which is being done proactively to address industry harms, and will give that work its explicit support.

ISBA

5.   The Current Self-Regulatory Framework

5.1.   In this section of our response, we write with reference to the questions contained in Chapter 4 of the consultation document.

The ASA and the IPP pilot

5.2.   ISBA and our members strongly support the world-leading ASA self-regulatory system for the advertising industry in the UK. Levels of compliance with the CAP Codes and the ASA system are very high within paid-for advertising by the legitimate actors, that we have outlined in Category A above. The ASA reports good compliance and refers complaints to backstop regulators only in a small minority of cases. There is no evidence that this system is failing or causing the harms outlined in the OAP consultation.

5.3.   We have found that one of the strengths of the ASA self-regulatory system is an in-built flexibility which allows it to be agile and adapt to meet the challenges of a rapidly evolving and innovative market.

5.4.   The current ASA system provides comprehensive powers to enforce against any breaches of the advertising Codes. In terms of powers and sanctions, the ASA can direct the advertiser, including through published rulings, to amend or remove an ad if it is found to have breached the Codes. Published rulings support transparency in the ASA's regulation and serve the interests of the public and the ad industry by clarifying when and how the rules have been broken.

5.5.   In almost all cases the advertiser complies with the ASA's direction. If the advertiser refuses, there can be sanctions, including refusal of media space, to secure the advertiser's compliance. ASA sanctions have the effect of cutting off access to most 'push' and social media, limiting problematic content to media space with limited traffic. Rare cases of persistent non-compliance typically involve smaller advertisers, such as sole traders or small businesses, with very limited reach who are refusing to amend misleading claims made about their own product and which were communicated on their own website. Under these arrangements, which enjoy a high degree of co-operation from the sector (including online media-owners and advertising intermediaries), the ASA is able to achieve the takedown of ads in the paid-for space where necessary with no need to resort to further measures.

5.6.   The ASA maintains formal agreements with a range of backstops, some exercising cross-sector powers and others exercising sector-specific powers. They include, but are not limited to: Trading Standards; the Gambling Commission; the Information Commissioner's Office; the Medicines and Healthcare products Regulatory Agency; the Competition and Markets Authority; etc. The ASA can refer non-compliant, non-broadcast advertisers to these bodies for their consideration of statutory sanctions including legal undertakings, fines, website takedowns, and prosecutions.

5.7.   As the OAP consultation document notes, the development of what was previously termed the ASA's Online Platform and Network Standards (OPNS) work is a key milestone in ensuring that intermediaries and platforms work constructively with the regulator to ensure that its writ runs online. OPNS has now moved to its next phase with the launch of the IPP pilot, which began on 1 June 2022. The IPP will extend the ASA's role online and explores bringing more accountability and transparency

to the regulator's work with paid-for online ads, and revolves around key Principles which establish broad objectives around awareness-raising, advertising compliance, and ASA enforcement.

5.8. Companies who have agreed to participate in the pilot include Amazon Ads, Google, Meta, TikTok, and Twitter. They and others have voluntarily agreed to provide information to the ASA to demonstrate how they will operate in accordance with the Principles of the IPP, with an understanding that different companies can meet the Principles in different ways. This pilot will strengthen the ASA's existing relationships with many of these companies, and support new relationship-building with others in the online advertising supply chain.

5.9. The ASA will use this information and other intelligence collected over the reporting period to publish a report at an interim stage of the pilot (towards the end of 2022) and another after its conclusion (in Q3 of 2023). The reports will provide an independent, aggregated account of how the participating companies have performed against the Principles, highlighting examples of best practice and identifying areas for improvement. The information gathered through the pilot should also help the ASA, the industry and other stakeholders to consider whether and where gaps exist in the ASA's ability to enforce the CAP and BCAP Codes online that could be appropriately addressed by working with the businesses involved in the pilot, as well as other online intermediaries.

5.10. By exploring how to enhance transparency and widen formal accountability online, the pilot serves as a practical and valuable means to gather evidence and help inform future policy thinking in this area. This includes evaluating the criteria under which companies could, in the future, fall under the framework; the breadth and depth of the principles that would apply in order to help deliver better outcomes; and the funding arrangements necessary to underpin the ASA's operation of any future framework.

5.11. We would strongly recommend to the Government that they allow the IPP pilot to conclude and be evaluated before publishing a response to the OAP consultation or developing any next steps in regard to regulation or legislation. The IPP goes to the core of many of the legitimate questions and issues raised by the OAP consultation. The ASA's final reporting of the pilot will form a strong evidence base for any future policy discussion, and provides an opportunity for the industry to collaborate with government to address some of the aspects of the online harms described in the OAP.

5.12. The IPP pilot demonstrates how the ASA is becoming ever more involved in understanding and developing effective regulation for the online advertising ecosystem. To undermine that work would be to the detriment of meeting shared government, consumer and industry goals for the effective regulation of online advertising.

Industry codes and technical standards

5.13. Within the self- and co-regulatory ecosystem, we would draw attention to a wider range of complementary industry codes and technical standards, developed and managed by individual groups beyond that noted in the OAP. Together, these frameworks provide strong technical foundations and processes that allow the

online advertising supply chain to interconnect and improve the quality of digital advertising.

5.14. Digital advertising is global in its scale, with many standards and codes that have developed accordingly, with adaptations to local laws and markets where necessary. Recommendations flowing from the OAP must, therefore, reflect existing structures and the investments that underpin them, and consider how UK institutions complement, interface with, and promote them in order to strengthen the whole online advertising market. The list of industry codes and technical standards should also include the following:

- EDAA's YourOnlineChoices – a well-established, European-wide programme which gives users information about cookies and allows them to opt-out.
- TAG certification schemes and TAG's TrustNet – an initiative that uses blockchain technology, Distributed Ledger Technology (DLT), to improve transparency, accountability and efficiency in the supply chain.
- TechLab standards.
- The IAB UK Gold Standard.
- Ad Verification Guidelines produced by the IAB and the Media Rating Council.
- UK Online Measurement (UKOM) has been the industry-wide standard for online audience measurement across PC, tablet and smartphone since 2009. UKOM endorses Ipsos iris, a new online audience measurement platform including propositions to model both children's data and the reach of online advertising campaigns.
- The Programmatic Financial Audit Toolkit, created by the Cross-industry Programmatic Taskforce, to improve transparency of the programmatic supply chain.

Origin

5.15. As noted in the OAP, one leading example of an industry initiative working to improve transparency and accountability in the online advertising supply chain is Origin. At its root, Origin is seeking to resolve the harm of inaccurate audience measurement. It is an advertiser-led initiative, convened at a global level by the WFA with the UK as a lead implementation partner to enable the planning and evaluation of cross-media campaigns.

5.16. The work is designed to address three key gaps in the global measurement market:

- The difficulty in setting agreed standards to define a "view" in the context of digital platforms and across media with very different characteristics. Origin will offer impressions data combined with standards, and multiple indicators of viewing quality, including for example duration and completion. This will allow advertisers better to plan and report their campaigns and evaluate their spending.
- The need for a single, privacy-safe, independently auditable data set showing unduplicated reach across YouTube, Facebook, and other online platforms which may include Twitter, Snap, Amazon, and Ozone in the UK.
- The ability to compare the resulting data with viewing to broadcaster content watched live on TV or on demand across a range of devices.

The outcome is an approach data set and tools that enable advertisers to plan and evaluate campaigns across and between media with the confidence of independent oversight in a privacy-safe environment.

5.17. ISBA has made this work a priority and has been working with the WFA to convene advertisers, online platforms and broadcasters to discuss a common global approach.

5.18. In May 2022, ISBA announced the official launch of Phase 3 of Origin. Up until this point, the focus for Origin has been to design and test the idea of the platform. This included the creation of a prototype, the completion of a proof of concept, and tests that it could successfully measure advertising campaigns across TV and digital media outlets. The objectives of Phase 3 are to develop and test a minimum viable product of the Origin service, and to finalise strategic arrangements among the project members.

5.19. Origin is just one example of cross-industry action taking place to tackle industry harms, such as those outlined in the OAP taxonomy. We welcome continuing opportunities to discuss the progress of Origin further and in detail with DCMS officials.

VoD regulatory standards

5.20. The consultation asks whether advertising for VoD should closer align to broadcasting standards or follow the same standards as those that apply to align.

5.21. We believe that the answer is no. For good actors operating within the ASA system, the CAP and BCAP Codes are currently managed for alignment as far as is practical, given the different media characteristics. Pre-clearance is also practicable and proportionate for the mass audiences which are a characteristic of linear TV. Targeting capabilities are fundamentally different for VoD when compared to linear. Digital TV ad purchasing is highly automated, and is moving towards self-serve – which, in turn, is opening up opportunities for new advertisers.

I S B A

6. Rationale for Intervention

6.1. The harms set out in the consultation are very broad and include both illegal and 'legal but harmful' categories. Generally, we agree that the OAP taxonomy covers the main categories of harms that can be associated with online advertising. It is welcome that a distinction has been made between harms which are illegal and those which are 'legal but harmful'. This distinction can help determine whether intervention is necessary, where in the supply chain to intervene, and what type of intervention would be most effective as opposed to a one-size-fits-all approach. However, as previously noted there is a need for greater overall detail and clarity in the taxonomy, and the term 'legal but harmful' to be clearly defined.

6.2. In relation to the link between the taxonomy and the proposed options of regulatory reform, we would note that the following types and categories of harm fall outside of the remit of the ASA:

- adverts for illegal activities, products or services;
- malicious advertising;
- fraudulent advertising and counterfeiting;
- ad fraud;
- brand safety, including mistargeting; and
- inaccurate audience measurement.

Therefore, while these are accurate categories and types of harm, they fall out of the scope of the ASA as the regulator of legal advertising. With the exception of mistargeting and inaccurate audience measurement, these are illegal activities which will need to be tackled by criminal law enforcement agencies. This is not to say that industry does not want to play its part, where that is appropriate and where it can in exposing illegal activity; but it is for enforcement agencies to judge whether their resourcing and powers of investigation are adequate. We would wish to see their responses to these questions before commenting on the need for regulation to support the pursuit of criminals.

6.3. We believe the ASA self-regulatory system is world leading, adaptable to market changes, and robust. It works for both industry and consumers in the areas of the market under its jurisdiction. Industry-led initiatives are proving their worth when it comes to addressing the sorts of systemic challenges which impact on transparency and accountability. We do consider that it is appropriate to widen out responsibility for the prevention of harm in the paid-for space to all industry participants, not simply brand advertisers; but we do not see that a case has been made in the OAP for a revolutionary change in the way in which the online advertising market is regulated.

6.4. In recent consultations and publications including its Digital Regulation Plan, the Government has said that it will explore non-legislative measures in the first instance, and only design interventions on the basis of better regulation principles and evidence. This is a process which we believe government would be well-advised to follow when it comes to the future regulation of the online advertising ecosystem.

7. Options for Regulatory Reform

7.1. In this section of our response, we consider the questions and regulatory options set out in Chapter 6 of the consultation.

7.2. As discussed, we have found that there needs to be more detail within the taxonomy to cover a scale of harms and the range of agencies, good/bad actors or levels of regulation that are involved. There is not a 'one-size-fits-all' approach with regard to options for regulatory reform which would be suitable or most effective. Therefore, we conclude that there is likely to be a need for a mix of different levels of regulatory oversight for different actors and different areas of harm.

7.3. We strongly believe that the industry-led self-regulatory regime for online advertising, administered by the ASA, is effective at addressing the range of harms currently within its responsibility and jurisdiction. We have described this as Category A in section 4.6 of this response.

7.4. For brand advertisers and those areas that are already within the scope of the ASA system, as we have noted, there are very high levels of Code compliance for paid-for advertising by legitimate actors. There is no evidence that this system is failing or causing the harms outlined in the consultation paper. The regulation within this area of the online advertising market is working and effective.

7.5. We would also note that the ASA system is developing and evolving to meet new challenges and forms of advertising, with the most notable example being the IPP pilot; and greater advertiser accountability is being delivered in higher-risk areas, such as with the advertising of age-restricted products. We urge the Government to give these new initiatives time to demonstrate their effectiveness before drawing conclusions on any changes to the regulation of the online-advertising system.

7.6. We strongly support the continuation of the ASA system, which already includes some backstopped areas. However, as a point of clarification, we would highlight that it is a mischaracterisation to view this as merely the 'status quo', because of the ongoing developments and continual evolution of the self-regulatory system. It is flexible, adaptable, and evolving. Therefore, for it to be characterised as in any way static would be incorrect.

7.7. We are not in favour of a new statutory regulator as described in Option 3 of the consultation. This would represent an existential challenge to the ASA, threatening its funding and the sustainability of the advertising Codes. It would represent revolution, not evolution, and this is entirely unjustified by the evidence presented in the OAP. The online advertising market is a constantly evolving sector; therefore, the regulatory framework needs to be both robust and able to respond quickly to developments. The advantage of a self-regulatory system is that it can be amended and expanded with relative ease – unlike amendments needing to be brought forward to alter the remit of a statutory regulator through either primary or secondary legislation.

7.8. With regard to the other actors that are outlined within the OAP consultation – and who are not currently covered by the remit of the ASA and the Codes – we would welcome greater accountability across the whole supply chain so that the sole burden of responsibility does not exclusively rest with the advertiser. In that respect, we may see some advantages to a backstop regulator (Option 2) to cover specific

areas of concern in relation to actors who are currently are out of scope of the ASA's remit – for example platforms, intermediaries, and publishers.

7.9. For ease and effectiveness, rather than the creation of a new statutory body, we see that an option could be an expanded role for Ofcom, similar to the additional role and powers it is being given to tackle online harms as outlined in the Online Safety Bill.

7.10. However, it is important for such developments to be based on well-substantiated evidence which accurately identifies where in the supply chain harms occur and the actors that present the most risk. This would avoid unnecessary regulation within supply chains, or ineffective or poorly targeted efforts that reduce incentives to invest in effective industry schemes.

7.11. For those deliberately bad actors, who intend to circumvent good practice, regulation, and safety measures – and who are the source of many of the illegal harms highlighted in the OAP taxonomy – we recommend that action against them should rest with criminal law enforcement agencies. We have described this as Category B in section 4.6 of this response.

Conclusion

7.12. ISBA opposes the option of a new statutory regulator with Code-writing and enforcement powers. We and our members strongly believe that the ASA's role and work must be maintained and developed as the most effective option for regulation of the advertising industry. Furthermore, we would strongly recommend that the Government allow the IPP pilot to conclude and be evaluated, and that this is taken into account before Ministers publish any response to the OAP consultation or develop any next steps with regard to regulation or legislation. The IPP goes to the core of many of the legitimate questions and issues raised by the OAP.

7.13. Our stated preference is therefore for 'Option 1' and the maintenance of the ASA system, with suitable evolution after lessons that may be learned from the IPP pilot, and the requirements that may result for intermediaries, publishers, and platforms.

7.14. It is possible that a case can be made for a backstop regulator – 'Option 2' of the consultation – where it can be demonstrated that part of the ecosystem currently lacks one, and where a need is shown to exist. This is less, as the OAP puts it, the ASA being "backstopped more fully" than it is the possible extension of backstop powers to other qualified parts of the regulatory system which may already exist – such as Ofcom. It is our view that this should be considered before there is any suggestion of a new regulatory body.